

Statute Review Workgroup

Minutes

Date: March 13, 2012	Time: Noon to 1:00 p.m.	Location: AOC – Conf. Rm. 230
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Attendance:

Present: Hon. Stephen Kupiszewski, Chair, Theresa Barrett, Janet Sell, Bianca Varelas-Miller, Don Vert, Farrah Watkins.

Absent/Excused: Veronica Hart Ragland, Brandon Maxwell, Patricia Griffin.

Guests: Jennifer Pittman-Leeper

Staff/Admin. Support: Kathy Sekardi, Julie Graber.

Public: Timothy Frank

Matters Considered:

1. Welcome and announcements

Comm. Kupiszewski commenced the meeting at 12:00 p.m. with a quorum.

Motion: To approve the February 14, 2012, minutes as presented. **Action:** Approve, moved by Don Vert, seconded by Theresa Barrett. Motion passed unanimously.

2. Review and discuss retroactive support modification

Members recommenced their discussion from last meeting regarding retroactive support modification and reviewed relevant case law from other jurisdictions. Discussion ensued about the following points:

- Janet Sell discussed two possible models based on laws in Alaska and Missouri.
 - In Alaska, there is no retroactive support modification but the court may find that preclusion is a defense based on clear and convincing evidence, which means that the court would have the authority to preclude arrears.
 - In Missouri, the family service division (or Division of Child Support Enforcement, DCSE) may determine the amount of abatement for any child support order.
 - Members considered whether the determination of arrears should be a court or an agency function. Members agreed that the court should have the authority to determine arrears.
- Comm. Kupiszewski suggested the inclusion of statutory language that would give clear authority to the court to make findings that payments should be made directly to the child in the form of a direct pay credit when the child is living with the obligor on a full-time basis.
 - Members supported the idea of a credit.
 - Members discussed whether this credit would constitute a modification or if it is in conflict to federal legislation. Further discussion is needed on this topic.
- Don Vert related a recent scenario that illustrated the current limitations for the court when faced with unique circumstances. A father came in to request a modification of child support because the child who was living with him for the last nine years just returned to live with the mother, who immediately obtained IV-D services. During the nine years, the parents failed to file a change of custody. Consequently, DCSE is now pursuing the father to pay child support for the nine years during which the child lived with him. The only assistance that could be offered in this instance was to send him to DCSE for an administrative review.
 - Members evaluated how Comm. Kupiszewski's direct pay credit proposal would impact these types of unusual situations. Had it been in place, Ms. Sell would have recommended the father file an action so the court could determine arrears and exercise discretion in giving a credit and in precluding arrears.

- Members considered some requirements for a direct pay credit proposal:
 - Must be subject to clear and convincing standard of proof.
 - Include a presumptive time limit (similar to the current three-year limit to establish child support) with an exception for extraordinary circumstances.
 - Members did not reach a consensus but they will review when proposed language is offered.
- Ms. Sell recommended moving away from the Alaska model by addressing retroactive support modification as a credit instead of as equitable preclusion. She suggested incorporating the credit in A.R.S. § 25-510.
- Members queried whether other States have done something similar to the proposed direct pay credit. Members will look to examples from other States on how they handled this topic (i.e., drafting of the language; challenges that were raised; and final dispositions).
- Members briefly discussed how arrears and inequitable determinations intersect with adoptions and termination of parental rights issues.
 - Don Vert called for greater protection of parties when agreements are made because not all parties realize the consequences. A parent who relinquishes their parental rights, for example, is not automatically relieved of a support obligation and arrears.
- Mr. Vert sought simplification of court procedures when dealing with self-representing (pro se) litigants who reach party-agreements.
 - For example, pro se parties often try to file a stipulation with the court but it will often not be binding because it will be rejected by staff, due to failure to provide a stipulation in the proper form of a motion and an order.
 - Members considered several options such as treating the stipulation as a petition, modifying some forms, and creating a new form.
 - Members objected to the court getting in the way of reached agreements.
 - This topic goes beyond the scope of the workgroup.

3. Review and discuss public comment

Pursuant to Representative Ash's request to incorporate public comments into SRWG's review of the child support guidelines, the workgroup reviewed the comments made by Mr. Hamu again to assess whether all of his comments required substantive changes to the guidelines. Members were in agreement that his comments would necessitate substantive changes (to the guidelines or to programming) that go beyond the scope of this workgroup. Additionally, there was consensus that these issues must be discussed with the full committee to determine whether some or all of these issues should be undertaken; to prioritize them (i.e., one at a time, all at once or wait until the next review cycle); and to provide a roadmap and further direction on which agenda item to expand.

4. Call to the Public

No comments were made.

5. Set next agenda

For the next agenda, SRWG will discuss proposed direct pay credit language.

Meeting adjourned at 1:02PM.